

**Jersey Windows, Inc. and the Window Clinic, Inc.
and National Organization of Industrial Trade
Unions. Case 22-CA-19469**

May 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon a charge filed by the Union on September 23, 1993, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on March 10, 1994, against Jersey Windows, Inc. (Respondent Jersey Windows), alleging that it violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, Respondent Jersey Windows failed to file an answer.¹

On April 18, 1994, the General Counsel filed a Motion to the National Labor Relations Board for Partial Summary Judgment and Memorandum in Support.² On April 21, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Respondent Jersey Windows filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Partial Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Partial Summary Judgment disclose that the Region, by letter dated April 5, 1994, notified Respondent Jersey Windows that unless an answer were received by close of business on April 12, 1994, a Motion for Default Summary Judgment would be filed.

¹ The charge was mailed to Respondent Jersey Windows and returned to the Region undelivered as "moved—Left No Address." The Region did receive a return receipt when it served the complaint. The Respondent's failure to provide for service of the charge cannot defeat the purposes of the Act. *Maislin Transport*, 274 NLRB 529 (1985).

² The complaint also alleges that Window Clinic, Inc. purchased the business assets of Respondent Jersey Windows, was on notice of Respondent Jersey Windows' potential liability in this matter, and is therefore a successor to Respondent Jersey Windows with responsibility to remedy Respondent Jersey Windows' unfair labor practices. *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973). The General Counsel does not seek summary judgment against Respondent Window Clinic, Inc.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Partial Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times until about August 18, 1993, Respondent Jersey Windows, a corporation, with an office and place of business in Clifton, New Jersey, was engaged in the sale, fabrication, and installation of replacement windows.

During the 12-month period ending August 18, 1993, Respondent Jersey Windows, in conducting its business operations, purchased and received at its Clifton, New Jersey facility goods valued in excess of \$50,000 directly from points outside the State of New Jersey.

We find that Respondent Jersey Windows is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent Jersey Windows constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees excluding office clerical employees, supervisors, foremen, guards, watchmen and all others as defined in the National Labor Relations Act.

Since at least 1991 and until Jersey Windows' closure on August 18, 1993, the Union was the designated exclusive collective-bargaining representative of the unit, and the Union was recognized as the representative by Respondent Jersey Windows. This recognition is embodied in a collective-bargaining agreement which is effective by its terms from August 14, 1991, to August 13, 1994.

At all times until August 18, 1993, the Union was the exclusive collective-bargaining representative of the unit.

Since March 28, 1993, Respondent Jersey Windows failed to continue in effect all the terms and conditions of the agreement by failing to remit periodic dues and initiation fees to the Union and by failing to make contributions to the Union's health and welfare and pension funds as required by the collective-bargaining agreement.

Respondent Jersey Windows engaged in the above conduct without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

CONCLUSIONS OF LAW

By the conduct described above, Respondent Jersey Windows has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees in violation of Section 8(a)(1) and (5) of the Act.

By its failure since March 28, 1993, to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to remit periodic dues and initiation fees to the Union and by failing to make contributions to the Union's health and welfare and pension funds as required by this agreement, Respondent Jersey Windows engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent Jersey Windows has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1), since March 28, 1993, by failing to remit periodic dues and initiation fees and by failing to make contractually required contributions to the Union's health and welfare and pension funds on behalf of unit employees, we shall order Respondent Jersey Windows to remit to the Union periodic dues and initiation fees with interest, to make whole unit employees by making all such delinquent contractually required contributions to the Union's funds, including any additional amounts due in accordance with *Merryweather Optical Co.*, 240 NLRB NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Jersey Windows, Inc., Montville, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with National Organization of Industrial Trade Unions as the exclusive collective-bargaining representative of its employees in the bargaining unit, by failing to abide by the

terms and conditions of the collective-bargaining agreement with the Union.

(b) Failing to remit authorized periodic dues and initiation fees to the Union.

(c) Failing to make contributions to the Union's health and welfare and pension funds as required by the agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees excluding office clerical employees, supervisors, foremen, guards, watchmen and all others as defined in the National Labor Relations Act.

(b) Remit authorized periodic dues and initiation fees to the Union as provided in the remedy section of this decision.

(c) Make all contributions to the Union's health and welfare and pension funds as required by the agreement.

(d) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the contributions required by the agreement, as provided in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Mail signed and dated copies of the attached notice marked "Appendix"³ to National Organization of Industrial Trade Unions and to all employees who were employed by the Respondent at its facility in Montville, New Jersey at the time the Respondent ceased operations at that facility, at their last known address. Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt.

³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 31, 1994

James M. Stephens, Member

Dennis M. Devaney, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with National Organization of Industrial Trade Unions as the exclusive collective-bargaining representative of the employees in the bargaining unit, by failing to

abide by the terms and conditions of the collective-bargaining agreement with the Union.

WE WILL NOT fail or refuse to remit authorized periodic dues and initiation fees to the Union.

WE WILL NOT fail to make contributions to the Union's health and welfare and pension funds as required by the agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees excluding office clerical employees, supervisors, foremen, guards, watchmen and all others as defined in the National Labor Relations Act.

WE WILL remit authorized periodic dues and initiation fees to the Union.

WE WILL make all contributions to the Union's health and welfare and pension funds as required by the agreement.

WE WILL make unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make the contributions required by the agreement, with interest.

JERSEY WINDOWS, INC.